

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Art Unit: 3712

Hannigan et al.

Confirmation No.: 3458

Application No.: 09/709,255

Filed: November 8, 2000

For: METHODS AND SYSTEMS FOR
READ-ALoud BOOKSVIA ELECTRONIC FILING

Examiner: A. Rada

Date: January 9, 2007

APPLICATION FOR PATENT TERM ADJUSTMENT
(Request for Reconsideration of PTO's Patent Term Adjustment Determination)
(37 CFR 1.705(b))

Sir,

Applicants request reconsideration of the patent term adjustment indicated in the Notice of Allowance.

Please charge the \$200 fee set forth in §1.18(e) to Deposit account 50-1071.

Statement of Facts Involved

The PTO's calculations of both Applicant Delay, and PTO Delay, are believed to be in error.

The Applicant Delay is said to include 167 days from June 10, 2003 (Mail Final Rejection) to February 24, 2004 (Notice of Appeal Filed). However, not all of this period should be counted as Applicant Delay.

Following the June 10, 2003, Final Rejection, a Notice of Appeal was timely mailed, and received by the PTO on September 12, 2003. (An Appeal Brief was thereafter timely mailed, and received by the PTO on December 16, 2003.) However, the PTO apparently lost those documents, and the application wrongfully went abandoned.

Promptly upon receiving the Notice of Abandonment (dated February 19, 2004), Applicant filed a Petition to Withdraw the Holding of Abandonment (February 24, 2004).

The PTO granted the Petition.

A copy of the PTO-stamped postcard confirming receipt of the Notice of Appeal on September 12, 2003, was submitted with the Petition to Withdraw Holding of Abandonment, and is of record in the PTO's image file wrapper (i.e., with the February 24, 2004, Petition).

A copy of the PTO-stamped postcard confirming receipt of the Appeal Brief on December 16, 2003, is submitted herewith.

Because the abandonment was due to PTO error (mis-laying the documents timely filed by applicants in September and December, 2003), the 167 days of delay charged to applicants should be reconsidered.

Applicants believe the proper Applicant Delay to be charged in connection with this time period is as follows:

2 days: for the time period September 10-12 (the 3 month response deadline for the Final Rejection was September 10; the Notice of Appeal was timely mailed on September 9, but was not received by the PTO until September 12).

34 days: for the time period November 12 – December 16 (the deadline for filing the Appeal Brief should have been November 12 – 2 months after filing of the Notice of Appeal; the Appeal Brief was actually received at the PTO on December 16).

Thus, instead of an Applicant Delay of 167 days during this period, the correct number is believed to be $2+34=36$ days. Thus, the net Applicant Delay should be reduced by the difference of 131 days, i.e., from 387 days to 256 days.

Relatedly, the PTO delay is believed to be greater than calculated. Applicants' Appeal Brief was filed on December 16, 2003. The PTO had 4 months to make a timely response, i.e., until April 16, 2004. However, it did not respond to the Appeal Brief (by a Non-Final Rejection) until June 14, 2004. Thus, the PTO introduced a delay of 59 days.

This increases the PTO's total delay from 251 days to 310 days.

The correct Patent Term Extension is thus believed to be the excess of the PTO's corrected total delay (310 days) over the Applicants' corrected total delay (256 days), i.e., 54 days.

(Applicants may be entitled to additional Patent Term Extension if the patent issues after April 6, i.e., more than four months after applicants' December 6 payment of the issue fee.)

The patent application is not subject to a Terminal Disclaimer.

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application – other than those already considered in the PTO's earlier determination of patent term adjustment.

Date: January 9, 2007

CUSTOMER NUMBER 23735

Respectfully submitted,

DIGIMARC CORPORATION

Phone: 503-469-4800
FAX 503-469-4777

By /William Y. Conwell/
William Y. Conwell
Registration No. 31,943

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Receipt hereby acknowledged by the U.S. Patent and Trademark Office of the following: Appeal Brief (in triplicate) and Transmittal letter with deposit account authorization.

Inventor: Hannigan et al.
Appn No. 09/709,255
Filed November 8, 2000
Digimarc Corporation

WYC:imp P0243
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